UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA	)	Case No. CR-F-91-212 DLB
	)	
Plaintiff,	)	Fresno, California
	)	Friday, October 17, 1997
vs.	)	
	)	Probation violation hearing
LEONARD MORRIS,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS L. BECK
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:

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Court Recorder:

DOROTHY GIBSON
U.S. District Court
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Fresno, CA 93721

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FRESNO, CALIFORNIA, FRIDAY, OCTOBER 17, 1997

THE CLERK: Going back to number 2 on the calender, CR-F-91-212-DLB, United States versus Leonard Morris; hearing on violation of probation.

MR. RICE: Dawrence Rice appearing for Karen Kalmanir, for the United States.

THE COURT: All right. Mr. Morris is present in court without counsel. Mr. Morris, there is another allegation of violation of probation.

MR. MORRIS: Mr. Beck, for the record, is the Court aware that there's been a bill of particulars served privately on the prosecutor --

THE COURT: Well, I --

MR. MORRIS: — and that the prosecutor has not answered that bill of particulars as yet?

THE COURT: I have several things that I see have been served. I know that there was something entitled a writ of error coram nobis that was filed --

MR. MORRIS: That's not in this case, is it? Does that goes to the --

THE COURT: I thought it was numbered in this case.

MR. MORRIS: Well, it is, but it wasn't for the violation of probation, specifically.

THE COURT: I'm sorry?

MR. MORRIS: That wasn't for the violation of probation.

THE COURT: Well --

MR. MORRIS: It goes back to the original case. So --

THE COURT: Well, logically, one would assume that if a conviction were overturned by the writ of error coram nobis that probation wouldn't be a problem, would it.

MR. MORRIS: That's true.

THE COURT: Okay.

MR. MORRIS: Right.

THE COURT: Well, that's the reason I mentioned it.

MR. MORRIS: Okay.

THE COURT: Judge Coyle is — has ruled — I don't know if

you've gotten that order yet, but he's dismissed that.

MR. MORRIS: Well, he –

THE COURT: Ruling that –

MR. MORRIS: — that's going for –

THE COURT: Let me –

MR. MORRIS: — judicial review right now, so.

THE COURT: Okay. Let me finish my sentence and then you can finish all yours, okay?

MR. MORRIS: Okay.

THE COURT: That Judge Coyle has ordered that dismissed, and so that's not an issue for this particular hearing, I don't think. And if you care to appeal it, you certainly may.

MR. MORRIS: Well, it's already going to judicial review, so.

THE COURT: Well, that's fine.

MR. MORRIS: Okay. Yeah.

THE COURT: That's certainly your right. There was also — we received filed here something called a — well, first, a private demand for a bill of particulars.

MR. MORRIS: Right, under it.

THE COURT: I think is what it was. And also —

MR. MORRIS: Rule 7(f).

THE COURT: — a — again, let me –

MR. MORRIS: Okay.

THE COURT: — you can add to this after I get done, but let me get done, okay? Then the record hopefully will have some sort of logical progression. The — we also received a notice of default, something entitled notice of default –

MR. MORRIS: Notice of fault, I believe, isn't it? Default hasn't been filed yet.

THE COURT: I'm sorry?

MR. MORRIS: I said notice of default hasn't been filed yet. That's notice of fault.

THE COURT: You're right. It is notice of fault.

MR. MORRIS: Right.

THE COURT: I am — I stand corrected. Timely private notice of condition of fault for failure to respond to demand for bill of particulars to

determine nunc pro tunc the nature and cause of the proceedings as it applies to the demandant, with affidavit in verification. I have that here. That was --

MR. MORRIS: Just served, right.

THE COURT: I beg your pardon?

MR. MORRIS: That was just served in the past couple of days. So right.

THE COURT: That was just served and I just received it yesterday, as a matter of fact.

MR. MORRIS: Yeah.

THE COURT: Or the clerk's office received it yesterday. I have reviewed it. I don't know what application — well, I know what application you think it might have in this matter, Mr. Morris, and I guess I should let you state that position, and I will in a second.

But first of all, let me do what I need to do under the procedures as I understand them, and then you can tell us how you understand the procedures and we'll try and sort that out, okay? All right. There's a notice of violation of probation, allegation of violation of probation filed with this Court, which charges that you violated the terms and conditions of your

probation by failing to file your 1996 federal taxes.

The petition alleges that you have submitted to the probation officer documentation of your — on your monthly report forms from January, '96, to December, '96, which show that you received the sum of $48,100 in total compensation from Crossroads Dental Limited Partnership during the 1996 calendar year, and that you failed to comply with Title 26 of the Internal Revenue Code, subtitle (f), Chapter 61, subchapter (a), part 2, subpart (b), Section 6012, which requires individuals to file federal tax returns if their gross income exceeds a basic standard deduction, $6,700, plus individual exemption of $2,550, or $5,100 if filing jointly.

The petition goes on to allege that your gross income clearly exceeded the minimum filing standard, that you failed to comply with the special condition of probation number 6, which states you should comply with the provisions of the Internal Revenue Code during the period of probation, provide the United States probation officer with proof of compliance.

Now, you are of course entitled to remain silent on the issue of whether or not you complied with the terms of probation. Anything you say

can and will be used against you. As I've told you many times before, you are entitled to be represented by an attorney at all proceedings before this Court.

If you cannot afford to hire an attorney you're entitled to have one appointed at no cost to you. You're entitled to a hearing where the government would have to show that there's probable — show that — government would have to prove you violated the terms and conditions of probation.

At that hearing you're entitled to see, hear and question the witness against you. You are, of course, entitled to be represented by an attorney. You're entitled to present evidence, but not required to present evidence, on the issue of whether or not you're in violation of the terms and conditions of probation.

You're entitled to use the process of the Court to summon witnesses by issuance of subpoenas, et cetera, and you are entitled to a continuance. In fact, there would be a continuance for a time to prepare for that hearing. Now, do you have any questions about any of the rights I've explained to you?

MR. MORRIS: Yes, I do.

THE COURT: Okay.

MR. MORRIS: First off, I'm not even sure I'M the person named in that summons, and that's why the bill of particulars. I think the bill of particulars has to be answered before I can answer any of the violation of probation.

THE COURT: Okay. And so do you admit of deny that you're in viola ion of probation?

MR. MORRIS: Do I have to answer that if I don't know if I'm the person that's --

THE COURT: Well, if you want to --

MR. MORRIS: — that's named in the summons?

THE COURT: Well, I wonder what the mystery is, Mr. Morris, since --

MR. MORRIS: Well, it seems to me that I'm having my right to know the nature and cause of the charges denied by making me plead to the violation of probation, which you're doing.

THE COURT: Well, I don't know what the mystery is about the

violation — about the notice of violation.

MR. MORRIS: Oh, I have lots of questions. I don't know --

THE COURT: I'm sorry?

MR. MORRIS: --what it's about. I have questions. I don't know what it's about. That's why I need to know the nature and the cause of the charges, so that I can prepare my answer to the violation of probation. It's also me Federal Rule of Criminal Procedure Rule 7(f) right to have that --

THE COURT: Well, yes.

MR. MORRIS: — information. So.

THE COURT: It is, and that's what — that's why the petition has been filed. And I don't --

MR. MORRIS: That petition needs to be answered, then, for me to know how to proceed with the answer to the violation of probation.

THE COURT: Well, I understand what your claim is in your demand, and frankly, these are the very same types of claims that were raised in the jury trial at which you sere convicted for failure to file. And after having a several - day jury trial, an appeal, various orders on probation, I can't fathom why it is that you think that --

MR. MORRIS: So that doesn't --

THE COURT: Mr. Morris, Mr. Morris, come on now. I can't fathom why it is you think that it's somehow unclear or that somehow you still don't have to file. Now --

MR. MORRIS: Okay. Well, that --- does that do away with my right , then, to know the nature and cause of these new charges?

THE COURT: No, Mr. Morris. I'm just saying that the nature of the charges in the petition and the allegation of the probation appear to me to be sufficient under the law to provide you notice of what they are. The various things that you have demanded here may well be something you want to present at the hearing in defense that you're not required to file because of various — your belief of the application of carious provisions of the Internal Revenue Code.

If you choose to present that as a defense, then you may. But this demand about your name and whether your name's appropriately there. This is the name you appeared on in this Court since 1993, the name that appears on all the charges, the name that you've been summoned under and appeared many times, the name that appeared on the file that went to the

appeal that you filed with the Ninth Circuit.

So it seems to me just a little bit silly to demand to know whether this is you and whether a name is. Certainly, you received the summons. You appeared in court. You've had contact with your probation officer many times, and I have no doubt that it's you, Mr. Morris. I recognize you.

MR. MORRIS: Well, you recognize Leonard Morris, but ---

THE COURT: I beg your pardon?

MR. MORRIS: Your recognize Leonard Morris, but as I have become to understand just recently, my true legal name is not Leonard Morris. It's Leonard Lloyd, Morris, both in upper and lower case letters.

THE COURT: Well, I'll note that you state for the record that your true name is Leonard Lloyd, Morris.

MR. MORRIS: In upper and lower case letters.

THE COURT: That's fine.

MR. MORRIS: Okay. But there's other issues involved in that bill of particulars going to jurisdiction, venue, relative action, cause of action.

THE COURT: Well, Mr. Morris, it seems to me that jurisdiction in this case has been well-established through the course of, as I said, the jury

trial, the appeal, the course of several years of probation, and I don't know what it is that you think isn't --

MR. MORRIS: Well, it seems to me it'd be easy to answer the bill of particulars, them, wouldn't it, and it hasn't been answered yet. And I can't proceed without knowing the --

THE COURT: Okay.

MR. MORRIS: ---the answers to the questions I've asked.

THE COURT: Well, here's what I'm going to. Here's what I'm going to do. I'm going to order that your denial of the petition be entered, and would you like counsel to represent you in this matter?

MR. MORRIS: No, I wouldn't

THE COURT: I'm sorry?

MR. MORRIS: No, I wouldn't

THE COURT: Okay. You're going to proceed representing yourself.

Mr. MORRIS: Right.

THE COURT: All right. And we've discussed many times the possible pitfalls of proceeding on you own, being that you wil be held to the

Rules of Evidence. You will be required to present your case under the Rules of Evidence, that there may be Rules of Evidence or rules of substantive law that you may be disadvantaged by proceeding on your own, you understand all that?

Mr. MORRIS: Yes.

THE COURT: All right. And you understand that as a possible consequence of being found in violation of probation that you could be ordered to serve on count one the remainder of the 12 months in custody that was imposed on you and suspended. By my calculations, 179 days were served and then there were an additional 10 weekends that were served.

And on count two you could be ordered to serve up to 12 months in the custody of the Bureau of Prisons, all of which was suspended during the period of probation. You understand that?

MR. MORRIS: Yes.

THE COURT: And that you could be ordered to serve — to pay a fine of — well, you've already paid the fine, so that wouldn't be in play. All right. You understand the possible consequences, then?

MR. MORRIS: Yes.

THE COURT: All right. And as I said, i'm going to order a denial entered on your behalf, and I'll set the matter for contested hearing where the government, of course, will bear the burden of demonstrating that you're in violation of probation.

And Mr. Morris, how much time would you like to prepare for that hearing?

MR. MORRIS: Can I reasonably expect an answer to the bill of particulars or not?

THE COURT: Well, I don't think you could expect one, but we could address that to the government. Mr. Rice, does the government intend to respond to the private demand bill of particulars or whatever that's called?

MR. RICE: No. I think the petition adequately sets forth the charges in this matter —

THE COURT: All right.

MR. RICE: — as well as identity. I think his conduct is contentious.

MR. MORRIS: Okay. Well, I'd request leave to enter this in the Circuit Court for — bring it up for —

THE COURT: Request leave to what?

MR. MORRIS: — request leave to enter this in the Circuit Court for judicial review on the bill of particulars.

THE COURT: I'm sorry. Give me that again. I didn't catch it all.

MR. MORRIS: That I request leave to enter this in the Circuit Court for a judicial review on the bill of particulars.

THE COURT: What do you mean, enter this in the Circuit Court?

MR. MORRIS: I'm going to file a judicial review for the bill of particulars. It hasn't been answered.

THE COURT: Well, let me tell you that my understanding of the procedure under the rules — the Appellate Rules — is that until you're found in violation of probation or not found in violation of probation, you wouldn't have the right to appeal this case piecemeal to either —

MR. MORRIS: I have an administrative right to the bill of particulars that is being denied. Therefore, it can be brought up on judicial review, and ir will be.

THE COURT: That's fine. And I'm just telling you that my understanding of the rules of appeal is that you don't have the right to appeal

it --

MR. MORRIS: This isn't an appeal. It's judicial review, and it's on the administrative level. And as I — my understanding , I have the right to do it.

THE COURT: It's an administrative right, so you're going to appeal where?

MR. MORRIS: The bill of particulars is — my administrative right is being denied. Therefore, I have a right to bring that before judicial review.

THE COURT: All right. Well, here's the thing. I'm going to order that your bill of particulars be denied on the grounds --

MR. MORRIS: And how do you have the authority to do that when it hasn't been entered in the —

THE COURT: Mr. Morris — Mr. Morris —

MR. MORRIS: — hasn't been entered in the case.

THE COURT: — just — I'm sorry?

MR. MORRIS: The bill of particular hasn't been entered in the case. It's been served privately on the prosecutor.

THE COURT: I see. So you're not requesting me to rule on it.

MR. MORRIS: No.

THE COURT: Okay.

MR. MORRIS: You haven't got the authority to rule on it.

THE COURT: So the bill of particulars doesn't have anything to do with this case.

MR. MORRIS: It does.

THE COURT: Then would you like it --

MR. MORRIS: The prosecutor doesn't have standing until they've answered the bill of particulars.

THE COURT: Okay. But you're not requesting the bill of particulars in this action. You're requesting that as a private matter between you and the U.S. attorney. Is that correct?

MR. MORRIS: I'm requesting that the bill of particulars be answered before I can proceed in this matter.

THE COURT: Well, I understand that. But it seems to me logically, for it to have any effect on these proceedings, that somehow you have to make the request in these proceedings. Otherwise, there's no

connection, Mr. Morris.

MR. MORRIS: Well, it is because it's my administrative right to know the nature and cause, and I cannot proceed until I know the nature of the cause and I don't know that until the bill of particulars has been answered.

THE COURT: Okay. But here's — let me ask you this question again, okay. Do you also want to make the request for a bill of particulars, in addition, in this case?

MR. MORRIS: It's not necessary —

THE COURT: I'm sorry?

MR. MORRIS: It's not necessary —

THE COURT: Okay.

MR. MORRIS: — once it's — once it's served on the –

THE COURT: So you don't want to do that.

MR. MORRIS: — the answer's served on the — once it's privately served on the prosecutor.

THE COURT: Okay. But you're requesting — I'm —

MR. MORRIS: It's — they'd have to — once it's privately served

on the prosecutor, it has to be answered before the case can proceed, is my understanding.

THE COURT: What do you base that understanding on?

MR. MORRIS: It's on administrative procedures, rules --

THE COURT: What administrative ---

MR. MORRIS: --- it's Federal Rule --- Criminal Rule 7(f).

THE COURT: Well, see, the Criminal Rule 7(f), the bill of particulars is usually filed in the case, and the Court rules on the issue of whether or not you're entitled to a further bill of particulars, and if so, which parts of it you're entitled to. But you're --

MR. MORRIS: I think that's pretty well-established in the bill of particulars I've entered in the case.

THE COURT: Well, see, but ---

MR. MORRIS: The law that goes with it. So.

THE COURT: --- here's the point, is generally speaking, the reason we have the judge do these things is because the parties aren't entitled to make up their own rules as you go along. And I'm not trying to --- believe me, now, in all seriousness, I'm not trying to trick you up in suggesting that

you might want to file this and have it ruled on in this case.

If it's not filed in this case, whatever you take, whatever happens in this case up, it's not going to be part of the record in this case. It won't have been ruled on. It won't have anything to do with the allegations on appeal if it's not part of the record. You understand that?

MR. MORRIS: Once the Court's been noticed of the bill of particulars, it's my understanding procedurally, you can't proceed until a bill of particulars have been answered.

THE COURT: So the Court is powerless to rule on whether or not -

MR. MORRIS: The —

THE COURT: — hold on. Let me finish my question before you answer. So the court, under your understanding, is powerless to rule on whether the bill of particulars is appropriate or necessary before it proceeds?

MR. MORRIS: No, I'm not saying that. I'm saying that the prosecutor cannot proceed in the case until they have answered the bill of particulars, which means the Court can't proceed at the same time. So.

THE COURT: Well, that's just what I said. I can't — we can't proceed until they answer it, and the Court cannot make a determination of

whether it's necessary or appropriate, because it's a private matter between you and the U.S. attorney. That's your understanding?

MR. MORRIS: That's my understanding.

THE COURT: Okay. Well, and again, I'm asking you that — telling you — that that's not my understanding; that if you want it to have something to do with these proceedings, the bill of particulars has to be filed in these proceedings or somehow related to these proceedings, and that you're specifically telling me you don't want to do that. Is that right?

MR. MORRIS: That's right, because —

THE COURT: Okay. That's okay.

MR. MORRIS: Okay.

THE COURT: That's — you do it the way you want. I'm just telling you what I think and I'm trying to keep from sandbagging you on this, and telling you that I think, in my opinion, it has to be filed in these proceedings in order to have the effect that you think it does.

MR. MORRIS: That's not my understanding, so.

THE COURT: That's fine.

MR. MORRIS: Yeah.

THE COURT: That's fine. And I may have — you know — I don't know. Maybe you have an advantage over me on this in your understanding of the criminal procedure, but I don't think so.

MR. MORRIS: Well, I just took —

THE COURT: So here we go.

MR. MORRIS: — just took a three-day seminar in this and that's what's was —

THE COURT: Okay. That's fine.

MR. MORRIS: So. Yeah.

THE COURT: That's fine. That's fine. I'm going to set this matter for hearing, contested hearing on the allegations of violation of probation on Friday, the 21st of November, at 9:00 o'clock. And Mr. Morris, you're ordered to appear at that date and time, okay?

And that's the date for the hearing on whether you're in violation of probation or not. And if at some point in time you want me to rule on the bill of particulars, then you're going to have to bring it before me. And you've told me —

MR. MORRIS: I'll bring it before — for judicial review. That'll

take care of it.

THE COURT: I'm sorry?

MR. MORRIS: I'll bring it before judicial review. So.

THE COURT: You're going to bring it before judicial review where?

MR. MORRIS: Circuit Court --

THE COURT: Knock yourself out, as they say. That's fine. If that's what you want to do, then take it there. But basically, you don't want me to make any decision on that.

MR. MORRIS: No.

THE COURT: Okay. And it's your position that even though it's not filed in this case, ti's not a request in this case, that the government cannot proceed on this probation violation unless and until they comply with every request you've made.

MR. MORRIS: Till I know the nature and cause in the questions that I've asked.

THE COURT: That wasn't my question.

MR. MORRIS: Well, I'm just stating, until I know the nature and

cause of the questions I've asked, I can't proceed.

THE COURT: Well, I think you know the nature and the cause. That's a different issue than whether or not they.ve answered all you questions.

MR. MORRIS: Well, the questions are to the nature and cause.

THE COURT: Reasonable minds could differ on that one, Mr. Morris. But the 21st of November, okay?

MR. MORRIS: I'll be here.

THE COURT: At 9:00 o'clock for contested hearing on violation of probation. Be ready to proceed at that pont in time. It at any point, Mr. Morris, you make the determination that you want to be represented by counsel, then you should certainly let us know, and if you're requesting appointment, let us know.

We'll try to do what we can. If there's some further — if you want this Court to — if you want to file the bill of particulars in the case between now and then, then you should let us know and do that. If you want to ----

MR. MORRIS: It's been --

THE COURT: — if you want a ruling on the bill of particulars

between now and then you should let us know and we'll put it on calendar and do that. Otherwise, we will see you on the 21st of November at 9:00 o'clock for contested hearing. All right? Thank you.

(Whereupon, the proceedings in the above-entitled cause were concluded,)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript, from the electronic sound recording of proceedings in the above-entitled matter.

_____ October 28, 1997

Elizabeth Reid, Transcriber